

# DRAFT

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PROJECT NAME: Milpitas Senior Center  
PROJECT NO.: 8176

CITY COUNCIL APPROVAL  
DATE: August 1, 2006

## CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF MILPITAS AND NOLL AND TAM ARCHITECTS

THIS AGREEMENT for consulting services regarding the Civic Senior Center Project ("Project") is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and Noll and Tam Architects ("Consultant") (together sometimes referred to as the "Parties") as of August 1, 2006 (the "Effective Date") in Milpitas, California.

### Section 1. SERVICES.

Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2008, and Consultant shall complete the work described in Exhibit A - Part 1, (Programming, Design and Bidding Services) by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The parties will discuss an amendment to this Agreement to complete the work described in Exhibit A - Part 2 (Construction Services) prior to the expiration of the current term (for Part 1.) Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control.

**1.2 Standard of Performance.** The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultants working in the geographical area in which Consultant practices its profession. Consultant represents itself as an experienced practitioner in the field of work for the scope of this project and is responsible for performing all work appropriate and necessary to produce a bid package suitable for competitive public bidding as required by the scope of work of this contract.

Consultant acknowledges that it is their obligation to prepare bid package(s), including plans, specifications, and other bid documents; suitable for bidding under the Public Contracts Code. Consultant further acknowledges that Consultant understands the standard of care required of bid packages advertised by public agencies for competitive bidding. The City is relying upon the Consultant's professional skill and experience to prepare the bid package(s). The Consultant shall produce Construction Documents and Bid Documents ready for bid within the schedule.

**1.3 Assignment of Personnel.** Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ or is otherwise physically unable to perform the job duties. The new person shall be at least of equal status and experience to the designated person. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to

meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

- 1.4 **Time.** Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above. Consultant shall complete each phase by the date scheduled in Exhibit A. Consultant is not responsible for delays beyond their reasonable control.

## **Section 2.       COMPENSATION.**

City hereby agrees to pay Consultant a lump sum amount of Eight Hundred Eighty Eight Thousand One Hundred Seventy Five Dollars (\$888,175.00), for all work set forth in Exhibit A, Part 1; plus all Reimbursable Expenses incurred in performing the work, as described in Exhibit B, not to exceed Fifty Five Thousand Dollars (\$55,000.00); plus Additional Services, if any, not to exceed Twenty Five Thousand Dollars (\$25,000.00). Total Compensation shall not exceed Nine Hundred Sixty Eight Thousand One Hundred Seventy Five Dollars (\$968,175.00). City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

- 2.1 **Invoices.** Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the percentage of project phase completion prior to the invoice date, as shown in Exhibit B. Invoices shall contain the following information:
- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
  - The beginning and ending dates of the billing period;
  - A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
  - A tabulation of Reimbursable Expenses for the billing period;
  - Total invoice amount, total billed to date, and remaining amounts, for each phase.
  - Certification of the lack of compensation on the Project other than compensation from the City;
  - False Claims Act certification in the form set forth in Exhibit E;
  - The Consultant's signature.
- 2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

- 2.2.1 Retention.** City shall retain 10% of each approved payment and withhold that amount. The City shall release retention accrued through the end of the Building Program phase (Tasks 1-2) upon successful and timely completion of the final Program and City approval of the final Program. The City shall release retention accrued through the end of Bidding and Award (Tasks 3-6) after a successful construction bid is received for the Project. City may, at its sole discretion, suspend withholding of 10% retention after 75% completion of design services performed for Tasks 3-6, i.e. not exercise withholding on the final 25% of design work, if the City deems that design services to date have been satisfactory and timely. For purposes of this paragraph, a successful construction bid is a responsible bid within 110% of the Final Estimate of Probable Construction Cost, or one that is accepted by the City Council and awarded a construction contract. If the project is not issued for bid within 60 days of Plan Approval, the duration of which shall be in accordance with City standard plan check review time, City will release full retention.
- 2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.9 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.
- In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.
- 2.4 Additional Services.** A contingency amount of Twenty Five Thousand dollars (\$25,000.00) is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B. These fees shall apply through the end of the calendar year in which this Agreement is signed and shall be adjusted each year to be the lesser of the Consultant's standard billing rates or an increase no more than the change in San Francisco-Oakland-San Jose Consumers Price Index.
- 2.5 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed Fifty Five Thousand dollars (\$55,000.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement.
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 Payment upon Termination.** If the City terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all accrued retention to date and the current month's payment as liquidated damages for the loss to the City to administer the completion of the work by others.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant feels is beyond the scope of work of the present contract phase. Consultant shall not delay the

work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.

### **Section 3. FACILITIES AND EQUIPMENT.**

Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

### **Section 4. INSURANCE REQUIREMENTS.**

Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meet the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by the City. Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

#### **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed.1/73) covering comprehensive General

Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:
- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
  - b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

#### **4.3 Professional Liability Insurance.**

- 4.3.1 General requirements.** Consultant, within the fee described in Exhibit B, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000.00 per claim.

- 4.3.2 Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, as long as it is reasonably available at that time, to the extent provided in the fee structure of Exhibit B.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work if reasonably available at the time. The City shall have the right to exercise any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of work under this Agreement.

#### **4.4 Requirements for All Policies.**

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Best's rating of no less than A:VII.

- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

- 4.4.3 Notice of Reduction in or Cancellation of Coverage.** An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be canceled by

either party except after thirty (30) days' prior written notice by mail has been given to the City, except for ten (10) days notice for nonpayment of premium. If any coverage required by this section is cancelled in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.

- 4.4.4 Additional insured; primary insurance.** Except for the professional liability and workers' compensation policies, each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as the latest edition of Insurance Services Office form number CC2010 to all policies stating that the City and its officers, employees, agents, contractors, consultants and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, if any, leased, if any, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants or volunteers.

An endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- 4.4.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.

- 4.4.6 Subconsultants.** Consultant shall include all subconsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

- 4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

- 4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents and volunteers from and against any and all losses, liability, claims, suits, actions, damages and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subconsultants, or agents or acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers or of any third party, or (2) the actions of Consultant or its employees, subcontractors, or agents have contributed in no part to the injury, loss of life, damage to property or violation of law. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City owns all materials produced under this agreement; however the City shall not hold the Consultant liable for the City's use of incomplete design work and related calculations and documents.

Consultant may not terminate this Agreement for any reason other than City's breach of contract. If any dispute exists between Consultant and City, Consultant must continue to perform all of its services, however City will participate in mediation if a dispute cannot be resolved in the normal course of work, after Consultant has submitted its disagreement in writing to the City along with related documentation, and allowed the City reasonable time to consider the information, get direction from its advising bodies, and attempt resolution of the matter with the Consultant. Consultant may seek other legal remedies following mediation. During construction Consultant does not have the right to terminate this Agreement, or cease performance under this Agreement, except for breach of contract by the City, as this action would likely cause extensive harm to the City by, among other things, interfering with construction of the design prepared by the Consultant

- 8.2 **Extension.** The City Engineer or his designee may, in his sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.



- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:
- 8.6.1 Terminating the Agreement;
  - 8.6.2 Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.6.3 Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or
  - 8.6.4 Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during

regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.3 **Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 **Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.
- 10.9 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*

Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code §1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.10 **Solicitation.** Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.
- 10.11 **Contract Administration.** This Agreement shall be administered by the Public Works Director/City Engineer or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Public Works Director/City Engineer or designee.
- 10.12 **Notices.** Any written notice to Consultant shall be sent to:  
Noll & Tam Architects  
729 Heinz Avenue  
Berkeley, CA 94710  
Attention: Ms. Janet Tam, Principal
- Any written notice to City shall be sent to:  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, CA 95035-5411  
Attention: Mr. Greg Armendariz, Public Works Director/City Engineer
- 10.13 **Professional Seal.** In accordance to licensing regulations and codes, work shall have the professional seal and signature of the licensed professional responsible for the work. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. Submittals to the Building Department shall be stamped as "building permit submittal" and stamped and signed as required by the Building Department's rules.
- 10.14 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.15 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

Exhibit A	Scope of Consultant's Duties and Services
Exhibit B	Compensation Manner and Amount, Reimbursables, Estimated Payment Schedule, Hourly Rates
Exhibit C	Personnel, The Professional Team
Exhibit D	Certificates of Insurance, Workers Compensation Insurance and Errors and Omissions Insurance
Exhibit E	Invoice or Claim Declaration
Exhibit F	City Support

The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Charles Lawson, City Manager

\_\_\_\_\_  
Principal/President

MILPITAS REDEVELOPMENT AGENCY

\_\_\_\_\_  
Charles Lawson, Executive Director

\_\_\_\_\_  
Principal/Secretary,  
Chair Board of Directors

Attest:

\_\_\_\_\_  
Mary Lavelle, City Clerk/Agency Secretary

Approved as to Form:

\_\_\_\_\_  
Steven T. Mattas, City Attorney/Agency Counsel

Approved as to Content:

\_\_\_\_\_  
Greg Armendariz, Public Works Director/City Engineer

Financial Approval:

\_\_\_\_\_  
Emma Karlen, Finance Director

## **Exhibit A**

### **SCOPE OF CONSULTANT'S DUTIES AND SERVICES**

Consultant shall perform professional architectural engineering, and other services related to the programming, investigation of existing conditions and pre-design, site and building assessment, preparation of conceptual design alternatives, schematic design, design development, construction documents, cost estimating, scheduling, bidding, and construction contract award for the new Senior Center to be located at 40 North Milpitas Blvd., in the City of Milpitas, California, ("Project").

Consultant shall provide the services for all necessary design and engineering disciplines, including without limitation space planning, kitchen designer, interior design, mechanical, electrical, plumbing, fire protection, accessibility, communications and technology, security, "healthy building" program, structural, soils, geology, acoustical, lighting, signage, landscape architecture and site civil engineering. Consultant shall provide Title 24 studies, geotechnical, seismic, as well as other related studies and reports required for approval and permitting of the project. Consultant shall provide complete, professional, high quality services and products. The construction documents shall be complete and fully integrated to allow for City building permitting and construction bidding in accordance with public contracting codes. All services under the scope of work shall comply with the contract provisions. Consultant shall also provide consultation to City staff, City Council and others who are involved with the Project and shall provide guidance, advice and assistance in completion of the Project.

The Project goal is to provide an economical and efficient adaptive reuse of the existing library building, into a new Senior Center facility that supports Senior Services, including but not limited to recreation, nutrition, learning, companionship, counseling, health and well-being. The new Senior Center shall be programmed, designed and constructed to be welcoming and comfortable, and to accommodate the varied programs requested by the community. The principal architectural characteristics, layout, style and materials shall provide a setting that provides a place for seniors to be comfortable and safe, while encouraging an active lifestyle. The City desires a building that is flexible enough to adapt to future programs and uses; allows after-hours use by the community; coordinates with and supports activities at the adjacent Civic Center facilities; is cost-effective to operate and environmentally appropriate; links the space to appropriate outdoor opportunities; and is an attractive and suitable addition to the Civic Center. The intended approach is to renovate the existing library building at the Civic Center as the new Senior Center.

### **PART 1 PROGRAMMING, DESIGN AND BIDDING SERVICES**

#### **SECTION 1 GENERAL**

The Project will include renovating the existing Milpitas Public Library building. The approximate size of the existing library is 18,500 SF per record documents. It is anticipated that the renovation improvements for the building's interior space shall not exceed the existing building footprint including the covered entry. However, refinements during the programming and conceptual design phase will allow determination of the final footprint of the improvements.

The City's Project staff (Project Manager) shall manage the design of this Project and performance under this Agreement. Consultant shall receive final direction from the Project Manager or City's authorized designee. The Project Manager shall assist in resolving any conflicting direction from other groups, departments or agencies. Consultant shall provide the services necessary to complete the design of the Project, as defined in this Agreement, including but not necessarily limited to, preparation of documents

to indicate compliance with applicable codes, rules, regulations, and guidelines, and as required by the Building Department for issuance of a Building Permit.

The anticipated schedule is completion of permitting and final bid documents by mid 2008, and award of a construction contract by autumn 2008. Start of construction is currently anticipated for December 2008-January 2009, as soon as library services have been relocated to the new library building.

**A. General Performance Requirements:**

1. Consultant shall coordinate this scope of services with the City's departments and City's separate consultants and contractors as needed and as directed by City.
2. Consultant and the City recognize the importance of the need to maintain the Consultant's key personnel and Subconsultants' key personnel throughout the entire duration of services, and therefore will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner.
3. The schedule for the performance of the Consultant's services included may be adjusted by mutual agreement as the Project proceeds. Consultant shall manage the Consultant's services, manage its Subconsultants and administer the Project. Consultant shall consult with the City, research applicable design criteria, communicate with members of the Project Team, and issue monthly written progress reports and brief weekly e-mail updates on progress, or as otherwise mutually agreed to with the City.
4. Consultant shall obtain plan approvals and permits from the Fire, Planning, Building, and Engineering departments.
5. Consultant shall prepare, and periodically update, a Project Schedule for the City's review. The Project Schedule shall identify milestones, dates for decisions required of the City, design services furnished by the Consultant and the Consultant's Subconsultants, dates of reviews and approvals required by all governmental agencies that have jurisdiction over the Project, deliverables to be furnished by the Consultant, completion of documentation provided by the Consultant, commencement of construction and substantial completion of the Work. The schedule shall include adequate periods of time for review and consideration by City and shall incorporate pertinent calendar information including all Consultant Holidays, City Holidays, and public meeting dates of the Senior Advisory Commission, Senior Center Facilities Subcommittee, City Council, and relevant meeting dates of the City Parks Recreation and Cultural Resources Commission (PRCRC) or Planning Commission. The Project schedule shall include these milestone dates:
  - Completion of Program and Conceptual Design;
  - Completion of Schematic Design;
  - Completion of Design Development;
  - Completion of 60% and 100% Construction Documents;
  - Completion of Bid Documents;
  - Other milestones pertinent to the completion of the Project.
6. Consultant shall submit design documents to the City for purposes of review and evaluation by the City at the end of the Program and Conceptual Design, Schematic Design, Design Development, 60% and 100% Construction Document phases, and final bid documents. Consultant shall address all comments provided and compiled by the City into a single set of coordinated comments and make revisions as required by the City for each phase in a timely manner. In responding to review comments and revising the design documents, Consultant shall review, coordinate and address all associated consequences of the revisions to maintain the integrity of the documents and the design intent. Submittals that have not completely addressed prior review comments will either be accepted as an intermediate submittal that

does not satisfy the milestone, or may be rejected, until the submittal addresses the prior review comments.

7. Consultant shall assist the City in connection with the City's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.
8. Consultant shall provide the City with information and recommendations on the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.
9. Upon request of the City, Consultant shall make presentations to explain the design of the Project to representatives of the City, as necessary to inform the City's various bodies (City Council, Commissions, Subcommittees, Departments) to support the City's development and Capital Improvement review process, at each of the phases.
10. Consultant shall not rely on the accuracy of City Record Documents. The City does not warrant the accuracy or completeness of its Record Documents. Consultant shall verify all information to their professional satisfaction. Consultant will note and report any discrepancies observed in the course of professional activities covered by the services provided under this Agreement.
11. Consultant shall prepare two team organizational meetings, one each at Programming and Design phases to introduce team members, to establish Project communication, and to discuss the participants' roles, responsibilities, and authority.
12. Consultant shall meet with the City Building, Fire and Planning departments, prior to the start of Schematic Design and Construction Documents phases, in order to review local and state codes for zoning, building, and CEQA/NEPA submittal and approval requirements.
13. Consultant shall make all submittals required to obtain building permits for the Project to the City of Milpitas Building Inspection Division, 455 East Calaveras Blvd, first floor. The Consultant shall meet with the Building Official as required to review and discuss plan review comments from the Building Official. The Consultant shall make any and all revisions to the plans and provide all submittals to the City as required by the City of Milpitas Building Official in order for the City to issue required building permits.
14. The Consultant shall be responsible for reviewing, coordinating, integrating and preparing all construction documents of all Subconsultants, and obtaining the stamp and signature on the plans and documents of Subconsultants requiring professional licensure, as required by State law. Consultant shall incorporate into each set of plans and each submittal to the City and City Building Department those plans, specifications, calculations, reports and other documents prepared by Subconsultants. Plans that are prepared by Subconsultants and not incorporated into sets of complete plans will not be accepted by the City Building Department and will not satisfy achievement of the milestone.
15. Consultant shall provide design coordination of structural system, mechanical, HVAC, plumbing, data/voice, audio/visual technology, electrical, lighting, telecommunications, security/alarm, kitchen equipment and other systems, for proper location, clearance and space requirements in order to reduce potential conflicts between these systems.
16. Consultant shall design and detail all aspects of the Project, and the amount of design and detailing required during construction or required of the Construction Contractor shall be limited to those items specifically enumerated herein below. Consultant shall provide detailed drawings and performance specifications and specific examples of material, products, fixtures and equipment that meet the performance specification, that provide sufficient detail to coordinate all design/build work with the Project. A list of "deferred submittals" for Contractor design/build work to be included in the Construction Documents may include the following:
  - a. Layout of automatic fire sprinkler system
  - b. HVAC duct layout of minor ducts and ductwork supports

- c. Manufactured guardrail or handrail structural components of systems, if used
  - d. Panelized ceiling systems, if used
17. Consultant shall neatly list all submittals required in the Construction Documents, organized in reasonable categories, on a spreadsheet, indicating: the item, the estimated quantity, estimated cost, at least one acceptable manufacturer or material supplier (three if possible), and references to the item mentioned in the Construction Documents, other pertinent comments or information. Generally, systems or products that are proprietary, licensed, or require periodic payments for continued use, are not acceptable. Exceptions may be allowed for certain items, where Consultant has provided reasonable information that indicates the use is necessary and cost-effective to the City and advance City Council approval is secured.
18. All work shall be done in an electronic format, appropriate to the work product, including (AutoCAD) drawings, in version 2004 or as otherwise acceptable to City, plans, elevations, sections, diagrams, details, etc.; (Word) specifications in version 2000 or as otherwise acceptable to City, reports, and other narrative documents; (PowerPoint) presentations; (Excel) Spreadsheets; (Project) schedules; and other appropriate digital electronic formats. Each submittal shall include the digital electronic information on CD, including all files, symbols, libraries, fonts or other information needed to view and print the digital data, as well as a paper hardcopy.

**B. Estimate of Probable Construction Cost**

Consultant shall be responsible to design the Project to the approved Construction Budget and Cost Plan for the Senior Center, as developed in conjunction with the City during the Programming effort. The Consultant shall provide an Estimate of Probable Construction Cost at each major design submittal, to demonstrate that the design is within the approved Construction Budget. The approved Construction Budget shall be such that if the lowest bid is not more than 110% of the final Estimate of Probable Construction Cost, it will fulfill the Cost Plan. For the purposes of the Estimate of Probable Construction Cost, it is assumed that the Project will be designed, bid, and constructed as a single Project, publicly advertised for at least 4 weeks, for competitive public bids, using the 100% Construction Documents. Furnishings, fixtures and/or selected equipment may be handled in separate bid package(s) as appropriate.

The total project is funded at \$11 million (2006 dollars) through redevelopment agency tax allocation bonds. This total must fund all design, construction, furnishings, move-in, administration, soft costs, cost rise and contingencies. The Consultant shall be responsible to design to the construction budget and assist the City, so that the required renovations and desirable project features identified during programming do not exceed the available construction funding. Consultant will assess the extent of required elements during investigation of existing conditions.

The Consultant will assist in identifying and prioritizing necessary/required elements and desirable elements, and help prioritize needs. Consultant will develop alternative strategies for remodeling and layout/programming of available space during the program and conceptual design alternatives phase. Public input will be invited and a preferred building program alternative will be selected. As needed, consultant will provide recommendations regarding items that can be included in the project as bid alternate items.



## **SECTION 2 SCOPE OF SERVICES**

### **Overview**

The Consultants' scope of services for this Project shall include full architectural and engineering services and all other necessary design elements for these facilities. The Consultant shall provide in-house personnel or Subconsultants to perform the services described below and in this Agreement, including but not necessarily limited to:

- Architectural design
- Acoustical design/sound attenuation as needed
- Audio/Visual technology design
- Building security design (compatible with City standard equipment)
- Civil engineering
- Code compliance and associated documentation
- Cost estimating
- Data and voice cable/raceway design
- Electrical engineering design
- Energy efficient/environmentally friendly design
- Fire protection design
- Furnishings selection
- Geotechnical engineering
- Interior design
- Kitchen equipment design/selection
- Landscape design
- Land surveying
- Lighting design
- Mechanical engineering design
- Plumbing design
- Roofing and waterproofing design
- Signage design
- Structural design and calculations
- Technology integration
- Furniture selection
- Casework as needed
- All other normal and customary work to provide 100% Construction Documents suitable for building permitting and public bidding.

### **Environmental Clearance**

Consultant is not responsible for environmental clearance documents. An independent environmental consultant will be retained by the City to prepare appropriate documents for environmental clearance. Environmental clearance based upon the selected building program is expected to begin concurrently with start of design work. Consultant selected for the Senior Center will collaborate with the environmental clearance process as needed. Such collaboration may include providing exhibits for use in CEQA and NEPA documents, refining the Senior Center design to minimize environmental impacts, and similar tasks.

## **TASK 1: INVESTIGATION OF EXISTING CONDITIONS**

- 1.1 Consultant to prepare a team organizational meeting to introduce team members, establish Project communication, discuss participants' roles and authority.
- 1.2 Consultant shall conduct investigation of the existing building and site to identify conditions that may be substandard, noncompliant with current codes, need renovation or upgrading or corrective actions, or be inconsistent with use of the building and site as a Senior Center.
- 1.3 Consultant shall conduct topographic survey as needed for programming and design of the Project.
- 1.4 Consultant shall conduct geotechnical investigation, including soil borings, for design and programming of the Project and to identify geotechnical parameters for seismic/foundation/structural design as needed. Consultant shall review the preliminary and final geotechnical findings with the City. Scope of services includes offsite disposal of soil cuttings.
- 1.5 Consultant shall conduct investigation and analysis as needed of the building's structural condition, seismic adequacy, compliance with current standards, and extent of renovations needed. Scope of services includes structural exploratory testing.
- 1.6 Consultant shall conduct investigation and analysis as needed of roofing/weatherproofing, heating/cooling systems, potential presence of any unhealthy/hazardous materials or elements and possible water damage, lighting, energy efficiency, code compliance, and any building or site aspects that relate to design and renovation as a safe, healthy senior center facility that meets current standards.
- 1.7 Testing and analysis shall be conducted in a manner that does not disturb the Library's ongoing activities. Investigation of building or site conditions that could affect Library operations should be scheduled to occur during non-public hours as needed.
- 1.8 Consultant to review and identify any noted site related discrepancies from the survey, geotechnical, structural and other site reports and analyses that might affect the Project.
- 1.9 Consultant to promptly provide written copies of investigation results including boring logs, topographic maps, surveys, analyses, test results, reports and any other findings to City. Electronic copies shall be provided to City if available.

## **TASK 2A: PROJECT PROGRAM**

- 2A.1 The Consultant shall develop a proposed Senior Center Program to support Senior Services, including recreation, nutrition, learning, companionship, counseling, health and well-being.
- 2A.2 The Program shall include building design that is flexible to adapt to future programs and uses.
- 2A.3 The Program shall incorporate information and respond to needs identified in the June 2002 "Senior Needs Assessment" as appropriate.
- 2A.4 The Program shall include building design that allows after-hours use by the community and be coordinated with the Civic Center facilities to enhance the Civic Center.
- 2A.5 The Program design shall include cost-effective building design.
- 2A.6 The Consultant shall include appropriate outdoor opportunities to complement the program space.
- 2A.7 Consultant shall tour the City's existing interim Senior Center and at least 3 other senior centers as acceptable to City to identify desirable elements for inclusion and avoid undesirable elements in the program where possible. Consultant shall invite City project team staff to attend such tours; City staff shall arrange their own transportation to sites. Consultant shall take photographs of all 4 senior centers suitable for Subcommittee and City Council presentations, and provide digital copies to the City.

- 2A.8 Consultant, in collaboration with subconsultant The Sports Management Group (TSMG), will conduct five (5) focus group sessions/staff interviews and a public workshop to invite input on the program and to gather information regarding conditions, needs, and goals of the Milpitas community.
- 2A.9 Consultant, in collaboration with TSMG, will conduct updated demographic research to identify and categorize expected patronage. Consultant will benchmark Milpitas' senior services against several facilities and/or communities of similar size in the area. Consultant will assess programs, staffing, square footage, budget, and/or similar factors.
- 2A.10 Consultant will develop an updated assessment of Milpitas' senior needs and senior center goals. Consultant will assess current and longer-term needs and goals, and potential improvements or modifications to facilities and services.
- 2A.11 Consultant will identify appropriate senior functions, services or programs that could be provided and assist the City in evaluating and prioritizing them.
- 2A.12 Based on the findings, evaluation, and community input, Consultant will develop recommendations for services, programs and/or facilities for potential inclusion in the Senior Center project to meet expected current and longer-term needs and goals.
- 2A.13 Consultant shall develop an outline program for the senior center, in sufficient detail to determine appropriate square footages for the various current and future functions, identify adjacencies, and allocate space within the remodeled building.
- 2A.14 Consultant will develop a draft Building Program addressing elements described below, and other feature(s) as identified during the assessment process.
- 2A.15 The following amenities and accessibility features are expected to be incorporated in the Building Program:
- Protected entry
  - Reception/meet & greet area
  - Classrooms for music, dance, art, instruction (including computer workstations), and multi-purpose
  - Counseling rooms (estimated quantity 4), associated waiting areas and storage for case files
  - Recreation area/game room(s) with space for pool and ping pong tables, game/card tables, seating, game storage, cue rack
  - Library area with bookshelves
  - Community area(s) with flier/brochure racks, display boards, PA system, television, seating. A living room-style area for relaxing and socializing is desirable
  - Coffee-Tea-Beverage station
  - Catering kitchen. Anticipated current equipment needs include:
    - refrigerators
    - freezers
    - steam table
    - electrical outlets & area for insulated holding cabinets (hot food trays)
    - prep sink
    - 3-basin commercial pot sink
    - hand sink
    - commercial quality stove or warming appliances
    - microwave
    - dishwasher
    - garbage disposal
    - dry storage
    - chemical storage for cleaning products
    - ample electrical outlets
    - phone/intercom system

- desirable additional items if budget/space allow include salad bar facility, soup service, ice machine, recessed trash receptacles, additional ovens/equipment for on-site cooking, space for self-serve beverage service
- Dining/Assembly area, including
  - check-in area for program participants with phone/intercom
  - portion of floor area suitable for dancing
  - microphone jacks
  - layout suitable for viewing movie/projector screen, bingo boards etc.
  - desirable items if budget/space allow include raised stage, microwave station, drinking fountain in dining area, built-in projection facilities
- Restrooms with automated hands-free facilities
- Front desk with bi-level counters (accessible), work stations (estimated quantity 4) and file/storage space
- Staff offices with staff kitchenette (option) and staff restroom (option)
- Vending machine area
- Drinking fountains
- Janitor closet with mop sink and storage
- Storage
- Utility, Electric, Telecom, Storage, Refuse/Recycling
- Automated doors
- Assisted hearing with wireless high-fidelity PA system
- Easy-to-read signs, clocks and room names and numbers including Braille signs
- Security system
- Layout and security conducive to use of selected rooms/facilities for after-hours events
- HVAC system that is clean, efficient, quiet
- Non-glare lighting; and other amenities.

Site improvements are expected to include:

- Connections to outdoor Civic Center spaces including pathway system
  - Circulation modifications as needed for shuttle service/passenger drop-offs and delivery vehicles, including possible realignment of islands/drive aisles/parking/entry paving to improve circulation
  - Front entry area modifications as needed including covered drop-off area
  - Trash enclosure modifications/relocation as needed
  - Upgraded walkway connection from Veterans Memorial vicinity to N. Milpitas Blvd. sidewalk and crosswalk (Note that paving, bollard lighting and amenities are to be coordinated with adjacent work at Town Center site per an existing City-developer agreement.)
  - Coordination with additional upcoming improvements at adjacent Town Center site and relocation of bus shelter on N. Milpitas Blvd.
  - Landscaping and site work as appropriate
  - Desirable additional items if budget/space allow include outdoor patio space, lighting, outdoor PA system, screening, shaded area, barbeque with sink, outdoor seating & table(s), layout that accommodates portable heaters.
- 2A.16 Consultant shall prepare documentation to determine the kitchen design that will satisfy the needs of the new Senior Center, including information to assist the City in determining the appropriate extent of food service facilities and equipment. At a minimum the kitchen shall be sufficient to serve the needs of the Senior Nutrition Program and after-hours uses for special events and rentals. The kitchen may be designed to provide food service to the other buildings at the Civic Center, which may include provisions of rolling food warming carts and coolers to serve the Community Center and City Hall for special functions.
- 2A.17 Consultant shall assess the cost and benefit of adding roof-mounted solar photovoltaic panels for energy efficiency, and provide findings and a recommendation. If City decides to add

- photovoltaic panels to the project program, design of photovoltaic panels would be added to the Consultant's scope of services as an Additional Services task. Providing rough-in and raceways/conduit for a future photovoltaic system is included in the Base Scope of work.
- 2A.18 Consultant shall assess the cost and benefit of upgrading the existing building to meet Essential Facility standards sufficient to serve as a community shelter in the event of an emergency. Consultant shall perform a structural assessment and provide conceptual structural design, as well as related conceptual architectural modifications and electrical/telecom modifications including standby generator. Consultant shall provide a cost estimate that identifies the cost increase for upgrades that are required to meet Essential Facility standards.
- 2A.19 Consultant shall conduct a focused market analysis and provide revenue projections for possible rental income from the Dining & Assembly Room, and for large fitness/group exercise room(s) if included.
- 2A.20 Consultant shall develop a proposed Building Program that includes essential upgrades, code compliance, and elements that will meet project goals. Consultant shall provide and incorporate recommendations regarding extent of building and site upgrades based on the information developed during Task 1. Consultant shall identify extent of recommended modifications to roofing, HVAC, lighting, structural features, restrooms, accessibility, or other elements. The Building Program will identify alternative approaches/systems/materials as feasible. The program will seek cost efficiency to deliver maximum adaptive reuse within limited budget. Early concepts for the base program shall be reviewed with the project team for input.
- 2A.21 Consultant shall develop three alternate layouts for the building and the site. This task is discussed in Task 2B.3 below.
- 2A.22 Consultant shall coordinate with City to develop a proposed Cost Plan for the overall project that includes all anticipated elements, hard costs and soft costs through completion of construction and commissioning/startup of project.
- 2A.23 Consultant shall coordinate with City to develop a Construction Budget with a construction bid cost target, for inclusion in the Cost Plan. The cost target will be selected to provide an allowance for future bidding climate, such that a responsive low bid that is 10% (or other agreed upon percentage) above the bid cost target will still meet the Cost Plan.
- 2A.24 Consultant shall prepare conceptual cost estimates for the proposed Building Program and the associated cost items in the Cost Plan, and identify an appropriate Building Program and overall Project that is within budget. As requested, Consultant shall include estimates for nonessential but desirable features that would be outside the project budget but could be pursued in the future. Consultant shall submit an Administrative Draft Project Program for internal City review. The Administrative Draft Project Program will include the findings of all assessments, evaluations and tasks described above, including benchmarking, needs, goals, community input, recommended priorities, findings from the Task 1 investigation of existing conditions, and design alternatives
- 2A.25 The Administrative Draft Project Program shall identify program(s), features included, layout/design/construction alternatives, assessment of alternatives, construction cost estimates, diagrams illustrating programs and layouts, identification of local design requirements, site constraints, recommended space allocations, adjacencies, existing and projected programs and services with usage/participation figures or estimates, and findings derived from review of comparable local senior centers. The Cost Plan may be included as an appendix or a stand-alone document as directed by City.
- 2A.26 The draft building program and draft construction cost estimate shall identify the preliminary proposed building systems with criteria/descriptions and/or level of quality proposed for major elements, such as structural, mechanical, plumbing, kitchen, electrical and lighting, telecommunications/data, building envelope and exterior materials, level of interior finishes, furnishings and equipment, signage, and other elements. The program and cost estimate shall identify the preliminary site improvements criteria/descriptions for passenger drop-off/loading,

- protected entry, deliveries, trash enclosure, landscape, lighting, utilities, signage, parking/circulation modifications as applicable, and patio if included.
- 2A.27 Consultant shall respond to City input on the Administrative Draft Project Program, incorporate appropriate modifications, and submit a Draft Program.
  - 2A.28 Consultant shall prepare to present the Draft Project Program at a Commission meeting for public input and a Senior Center Facilities Subcommittee meeting for input regarding a preferred alternative. This task is further discussed in tasks 2B.5 and 2B.6, and 2B.7 below.
  - 2A.29 Consultant shall refine a preferred alternative, cost estimate and Draft Project Program per input received.
  - 2A.30 Consultant shall prepare a final Senior Center Project Program.
  - 2A.31 Consultant shall attend a City Council meeting to present the final Project Program.
  - 2A.32 All Program reports, draft and final, shall be submitted in three hard copies, one reproducible original-quality hard copy, and one digital copy on a CD in a format acceptable to City.
  - 2A.33 Consultant shall be prepared to meet biweekly with staff or project team during the programming process.

## **TASK 2B: CONCEPTUAL DESIGN**

- 2B.1 Consultant to review local building codes and other applicable codes/requirements and the selected Senior Center Building Program and identify in writing any design issues or opportunities. Consultant shall confer with City Building Division and Planning Department to confirm zoning and CEQA review and other approval requirements.
- 2B.2 Consultant to confer with City to review and confirm existing conditions and site analysis results and review options for conceptual design alternatives with the City.
- 2B.3 Consultant shall perform more detailed analysis as needed to generate conceptual design alternatives for site plan, interior building layout, type of architectural treatment, and design of major items (roofing, glazing system if modified, e.g.). Consultant shall prepare alternatives for conceptual site plan, conceptual building layout, architectural treatment, and design of major items. Consultant shall provide comparative cost data and decision-making information packet. Consultant shall prepare three-dimensional/ axonometric study views of alternatives. Views shall illustrate day and night conditions from both interior and exterior perspectives. If a building addition is proposed and is cost effective, Consultant shall provide a massing model (computer or physical).
- 2B.4 Consultant shall prepare Team Meeting and present conceptual design alternatives and assist team in selecting a preferred alternative.
- 2B.5 Consultant shall revise and finalize the alternates and decision-making packet as directed.
- 2B.6 Consultant shall prepare for and attend a Commission meeting for public input and a Senior Facilities Subcommittee meeting to present the conceptual design alternatives for review and for a Subcommittee recommendation to the City Council.
- 2B.7 Development of conceptual design alternatives will be performed concurrently with the Building Program, to allow consideration of alternative designs and their costs to occur with the review and approval process for the Building Program. The goal is to identify feasible alternatives as early as possible, allow them to be assessed during the development of the Building Program, and result in the selection of a preferred design for the building, layout, and site improvements that can be included with the selected final Program for the project.
- 2B.8 The Conceptual Design phase will conclude with the selection and approval by City Council of a single conceptual site layout and building layout to develop further through Schematic Design and Construction Documents phases.

### TASK 3: SCHEMATIC DESIGN

- 3.1 Consultant to refine Schematic Plan based on direction and input from Conceptual Design phase.
- 3.2 Consultant to perform preliminary code compliance review per City Building and Planning Departments requirements.
- 3.3 Consultant to prepare Schematic Design package and statement of Estimate of Probable Construction Cost.
- 3.4 Consultant shall provide services necessary for the preparation of Schematic Design documentation for review and approval by the City. The Schematic Design documentation shall be based on the City-approved conceptual design and shall be of sufficient scope and detail to fix and describe the size and character of the Project.
- 3.5 Schematic Design documentation services to be provided by Consultant shall include the following:
  - a. Architectural design /documentation services, including development of all Schematic Design documents necessary to establish the final scope, relationships, forms, size, appearance and cost of the Project.
  - b. The Schematic Design documents shall include scale drawings for the following:
    - site plan with on-site and off-site work information
    - preliminary building plans depicting the area and configuration requirements for all interior and exterior spaces and demonstrating circulation
    - sections including the context, elevations including the context, and colored plan diagrams showing programmed uses and circulation
    - These plans shall be at reasonable scales, but not smaller than 1"=20' for site and civil sheets, and 1/8" = 1' for floor plans.
  - c. The Schematic Design documents shall describe preliminary alternatives for major materials, finishes, systems and products including an evaluation of cost and durability.
  - d. The Schematic Design documents shall describe preliminary selections of major building systems and construction materials.
  - e. The Schematic Design documents shall indicate improvements including landscaping outdoor spaces and modifications to parking, driveways, drop-off and entry areas.
  - f. The Schematic Design documents shall include schematic engineering design recommendation consisting of design criteria statements for civil, structural, mechanical, plumbing, electrical, fire protection, acoustical, lighting, security, audio-visual, and data / telecom systems. For each discipline, these statements shall include design criteria noted in the Building Program, building design and/or code requirements, identification of preliminary design loads and performance criteria.
  - g. The Schematic Design documents shall identify a location for Public Art feature(s), based on the type of feature(s) has been selected by City. Documents shall allot space, utilities or other appurtenances as needed for the Art. City will handle tasks related to Public Art as described in Exhibit F of the Consulting Services Agreement.
  - h. All other normal and customary work related to Schematic Design that the Consultant finds necessary or that will lead toward the timely delivery of other phases of work in this Agreement.
- 3.6 Documents shall identify preliminary space requirements for structural and building enclosure systems, preliminary space requirements for all mechanical systems and other equipment, and points of connection for utilities.
- 3.7 Provide coordination of major mechanical, electrical, plumbing and information technology systems and building structure. Resolve conflicts between these and any other elements:
  - a. Specification services, including development of preliminary outline specifications and preparation of necessary design documents consistent with City standard specifications and details and the City contract boilerplate.

- b. Consultant shall be invited to identify bid alternates, as they deem appropriate to enhance the possibility that actual costs shall agree with the statement of Estimate of Probable Construction Cost.
  - c. Consultant shall submit one electronic set, one reproducible, and three copies of the Schematic Design documents for the City.
- 3.8 Consultant shall carefully review and address all review comments by City and other reviewers and revise Schematic Design documents as requested.
- 3.9 Consultant shall prepare Team Meeting to present the Schematic Design package for review.
- 3.10 Consultant shall finalize Schematic Design package incorporating comments from a peer review, if held by City.
- 3.11 Consultant shall prepare renderings and appropriate study materials sufficient to communicate design intent to a broad audience.
- 3.12 Consultant to prepare and present the Schematic Design package to the Senior Advisory Commission/other public meeting, the Senior Center Facilities Subcommittee, and the City Council as directed by the City.

#### **TASK 4: DESIGN DEVELOPMENT**

- 4.1 Consultant shall coordinate and include all Subconsultants throughout the Design Development phase and coordinate with the City, City's representative and key departments, including, but not limited to, City's Building, Planning, Engineering and Information Services staff.
- 4.2 Consultant shall prepare Design Development documents as specified in "Deliverables" section below based on refinement and further development of the approved Schematic Design, including preliminary furnishing layouts, built-in fixtures, and equipment selections.
- 4.3 Consultant shall coordinate meetings with Building and Fire Department to review plans.
- 4.4 Consultant shall attend Team Meeting and present Design Development package for review.
- 4.5 Consultant shall refine Design Development plans based on comments received from City, and provide updated exhibits as needed for Subcommittee and Council reviews.
- 4.6 Consultant shall attend Senior Facilities Subcommittee Meeting for public and Subcommittee input on the Design Development package.
- 4.7 Consultant shall attend City Council Meeting to present 100% Design Development package for review and approval.
- 4.8 Deliverables:
  - a. Design Development package that illustrates and describes the refinement of the design of the Project, establishing scope, relationships, forms, size and appearance of the Project by means of plans, building and wall sections, exterior elevations, typical construction details, equipment layouts.
  - b. Site plans and floor plans for all major disciplines.
  - c. Preliminary furnishing layout plan.
  - d. Preliminary finish, materials and equipment schedules.
  - e. One set of electronic digital documents, one set of reproducible and three copies of Design Development package.
  - f. Outline specifications: Specification shall identify the major materials and systems and shall establish their general quality levels.
  - g. Details and specification shall be consistent with the Construction Specifications Institute (CSI) format.
  - h. Engineering documents shall include single line diagrams describing structural, mechanical, plumbing and electrical systems.



- i. Principal interior and exterior elevations showing preliminary locations of all electrical and mechanical controls, telecommunications, security, as well as life-safety devices for coordination with furnishing layout.
- j. Public Art: documents shall allot space, utilities, mounting support or other appurtenances as needed for Public Art feature(s) based on the type of feature(s) selected by City.
- k. Cost estimate: Consultant shall submit Estimate of Probable Construction Cost review by City.
- l. City may retain an independent firm to assist in reviewing construction costs. This independent check will be performed strictly for the benefit of the City, and shall not relieve the Consultant from its obligations under this Agreement. The City is not obligated to perform any independent check, and the Consultant shall not rely upon it for any check or review. Consultant shall prepare and attend a Team meeting, to review the Estimate of Probable Construction Cost and to confirm that the design remains within the approved construction budget. Consultant shall respond to input from City and City's representative resulting from cost estimate review. Should the design not be within the budget, Consultant shall revise the design as required and acceptable to the City to bring the design within the approved budget.
- m. All other normal and customary work related to Design Development that the Consultant finds necessary or that will lead toward the timely delivery of other phases of work in this Agreement.
- n. Consultant shall prepare Design Development documents consisting of the following drawings as needed, including but not limited to:
  - Access control
  - Audio / Visual Design and Details
  - Architectural Floor Plans
  - Building Code Analysis and Vicinity Map
  - Building Elevations
  - Building Sections
  - Building Equipment Plan
  - Service Counter(s), and Casework as applicable
  - Ceiling Plan
  - Ceiling Representative Details
  - Cost Estimate
  - Demolition Plans, as applicable
  - Detailed Site Plan
  - Door/Window Schedules
  - Electrical Plans
  - Electrical Room Detail Layout
  - Exterior Elevation Plans (all)
  - Exterior Elevations (enlarged partial, as needed)
  - Exterior Wall Representative Details
  - Finish Schedules
  - Foundation Plan
  - Foundation Sections and Representative Details
  - Furniture / Furnishing Plan
  - Fire Protection System Plans & Specifications
  - Floor Finish Plans
  - HVAC System Plans
  - Interior Design
  - Interior Elevations
  - Interior Elevations (enlarged and details as needed)
  - Kitchen & Food Service Plans & Details
  - Kitchen Health Code Plans

- Kitchen Specialties
- Landscape/Irrigation Design
- Mechanical Plans
- Mechanical Room Details
- MEP coordination working drawings (enlarged at congested areas)
- Millwork Representative Details (as needed)
- Photovoltaic energy system if included in program and approved as an Additional Services task
- Physical / Visual Attributes
- Preliminary Lighting and Representative Details
- Reflected Ceiling Plans
- Restroom Plans (enlarged)
- Roof Plans
- Roof Details
- Security System Design and Representative Details
- Signage Design
- Structural Plans
- Site Plan
- Specifications
- Telecommunications Layout and Representative Details
- Temporary Facilities Plan and Temporary Shoring if applicable
- Voice and Data Design
- Wall Section / Details (All Elevations)
- All other normal and customary plans related to Design Development that the Consultant finds necessary or that will lead toward the timely delivery of other phases of work in this Agreement.

## **TASK 5: CONSTRUCTION DOCUMENTS**

- 5.1 Consultant shall coordinate and manage Subconsultants throughout Construction Documents phase.
- 5.2 Consultant shall refine and further develop the approved Design Development package based upon City's comments on the Design Development package review.
- 5.3 One or more "Independent Checks" of the plans, specifications and construction documents may be performed by an independent party commissioned by the City prior to advertising for construction bids. Consultant shall incorporate any revisions or comments from these reviews in the final bid documents as appropriate. These checks may include architectural or engineering peer reviews, constructability reviews and/or cost estimate reviews. These independent checks are to be performed strictly for the benefit of the City, and they shall not relieve the Consultant from its obligations under this Agreement. The City is not obligated to perform any independent check, and the Consultant shall not rely upon it for any quality or quantitative check or review.
- 5.4 Consultant shall prepare 60% Construction Documents package, with City's comments from the Design Development package incorporated.
- 5.5 Consultant shall coordinate with City's telecommunications and information services staff, and continue coordination with Building and Fire departments.
- 5.6 Consultant shall continue to respond to comments by and requirements of involved outside agencies, including but not limited to the County Environmental Health Department.
- 5.7 Consultant shall attend Team Meeting; Review documents and finalize materials and finishes with City.
- 5.8 Consultant shall prepare the 100% Construction Documents package with complete quality control review, with comments from the 60% package incorporated, and written responses to 60%

- comments. Consultant shall prepare 100% Construction Documents package including updated final calculations and 100% Estimate of Probable Construction Cost for citywide review, and suitable for Building and Fire department permitting and outside agency permitting.
- 5.9 Consultant shall provide with each construction documents submittal the supporting documents and all calculations and data as needed for City and agency reviews and permitting and for securing all approvals that are required. Calculations include but are not limited to structural and Title 24.
- 5.10 Consultant shall attend a Team meeting and a public meeting, such as a Commission or Subcommittee meeting, to present the 100% Construction Documents package.
- 5.11 Consultant shall prepare a Bid Documents submittal that incorporates 100% review comments, permitting comments from Building and Fire Departments, County Health, and other bodies as applicable, with written responses to 100% comments.
- 5.12 Consultant shall submit permitted Bid Documents to the Engineering division for bidding.
- 5.13 City anticipates retaining an independent party to conduct a constructability or peer review of the Construction Documents. Consultant shall be prepared to attend one constructability/peer review session lasting up to eight hours with Consultant's major Subconsultant disciplines, Consultant's cost estimator, and the City and its representatives. Consultant shall incorporate revisions and/or recommendations of the review into the construction documents as appropriate.
- 5.14 Consultant shall make formal presentation of the final design along with the construction cost estimate to the Senior Facilities Subcommittee for review and the City Council for approval.
- 5.15 Deliverables:
- a. The Consultant shall provide Construction Documents packages based on the approved Design Development documents, City reviews, and updated budget for the cost of the work. The Construction Documents shall not be submitted until the design is within the approved construction budget. The Construction Documents packages shall set forth in detail the requirements for construction of the Project. The Construction Documents package shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.
  - b. Construction Documents packages shall include drawings and specifications from all disciplines, executed to a level of detail appropriate for open public bidding.
  - c. During the development of the Construction Documents packages, the Consultant shall prepare a Project Manual that include the Conditions of the Contract for Construction, Specifications and bidding requirements and sample forms furnished by the City.
  - d. Consultant shall submit one (1) set of reproducible documents and one set of electronic digital documents at 60% and 100% complete Construction Documents and final Bid Documents for review and approval by the City and for bidding. Consultant shall provide two full-sized original sets, wet-stamped and signed by all the appropriate licensed design disciplines, to be on file in the City Engineer's Office, prior to City Council approval of bidding.
  - e. Consultant shall include detailed technical specifications which are coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to all Building Code, Title 24, ADA, and all other local, State and Federal codes, regulations, permit requirements and conditions necessary for issuance of a Building Permit.
  - f. Consultant shall provide a final Estimate of Probable Construction Cost with the 100% Construction Documents, and an updated estimate, as required, for the final Bid Documents.
  - g. Consultant shall provide, if necessary and as directed by the City, bid alternates to ensure the Project stays within 5% above or below the final Estimate of Probable Construction Cost amount.
  - h. Consultant shall prepare for and attend a Team meeting, to discuss the cost estimate and confirm that the design remains within the approved construction budget. City anticipates retaining an independent cost estimator to assist in reviewing construction costs during the construction documents phase. Consultant shall respond to input from City and City's

representative resulting from cost estimate review. Should the design not be within the budget, Consultant shall revise the design as required and acceptable to the City to bring the design within the approved budget. Bidding will not proceed until the construction cost estimate is properly reconciled with the approved budget.

#### **TASK 6: BIDDING AND AWARD**

- 6.1 Consultant shall assist City during bid solicitation process.
- 6.2 Consultant shall prepare or revise as necessary (see above) a full-sized original set, wet-stamped and signed (as required by the State,) by all the appropriate licensed design disciplines, to be on file in the City Engineer's Office, during bidding, and provide a digital plot bid package for City for printing, and shall make available to the City an electronic version of the Construction Bid Documents.
- 6.3 Consultant shall provide bid phase services, as requested by the City, through award of the contract for construction for the following:
  - a. Responses to bidders' inquiries.
  - b. Preparation of addenda.
  - c. Attendance at one (1) pre-bid meeting.
  - d. Evaluation of bids.
- 6.4 Upon completion of bidding, Consultant shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda, City reviews and plan check including Fire Department, ready to issue for contract award and construction.
- 6.5 Deliverables:
  - a. One (1) set of reproducible (mylar hard copy for Construction Document contract file) and one (1) digital plot set of Bid Documents (100% Construction Documents package revised with City's reviews and plan check, including Fire Department), ready for Bid, Award, and Construction.

#### **SECTION 3: ESTIMATE OF CONSTRUCTION COST**

- A. Consultant is responsible for design to the City's construction budget. The City's construction budget shall be defined within the Cost Plan established in the Building Program and further refined with Consultant input during the Conceptual Design Phase. The amount of 110% of the construction budget shall be covered with the Cost Plan, so that a bid within 110% of the final Estimate of Probable Construction Cost will be within the Cost Plan. Consultant shall provide a statement of Estimate of Probable Construction Cost with each review submittal (at the end of Schematic Design, at Design Development and at the end of 60% and 100% Construction Documents. The City may use an independent cost Consultant as a sole resource to the City. Consultant shall not proceed further until each design submittal's cost estimate is within the City's Construction Budget, and reconciled to the City's independent cost estimates. Consultant acknowledges that it is in a significantly better position than the City to estimate the cost of the actual construction to be paid by the City to the contractor and others, because the Consultant is a member of, is familiar with, and has regularly worked within the construction industry, and therefore Consultant will provide these estimating services and be accountable for the estimate, as described below. The "Construction Budget" for the Project is the amount available for the bid of the lowest responsible and responsive bidder plus a 10% contingency for change orders. Likewise, the Consultant's Estimate of Probable Construction Cost for the Project shall be based on the estimated bid of the lowest responsible and responsive bidder.

- B. The City shall establish the construction budget in writing during the Conceptual Design Phase, which shall be within the Cost Plan established in the Building Program. Any and all estimates submitted by Consultant shall be reasonable and be sufficiently detailed to allow critical review by the City for reasonableness.
- C. As the design process progresses, Consultant shall update and refine the Estimate of Probable Construction Cost, periodically as necessary and at least at the end of each phase. Consultant shall advise the City of the reason for any adjustments to the previous Estimate of Probable Construction Cost.
- D. Should any Estimate of Probable Construction Costs submitted by Consultant exceed the Construction Budget, Consultant shall at the same time submit, without additional cost to the City, reasonable alternative approaches to the design and construction of the Project (including scope and quality) that will reduce the construction costs to be equal or less than the construction budget. Consultant shall include estimated construction costs for each alternate approach. If the City adopts one or more of the alternate approaches, then Consultant shall make the adopted changes and provide a revised Estimated of Probable Construction Cost based on the revised design. If the City does not ultimately choose to adopt sufficient alternate approaches to reduce the estimate of construction costs to, or below, the Construction Budget and the City does not ultimately direct Consultant to develop other alternate approaches, then the Consultant shall notify the City in writing of a recommendation to revise the City's Construction Budget. Consultant shall not begin the next phase until the City reconciles and approves the revision in the Construction Budget.
- E. At the same time as, or prior to, submission of the 100% complete Construction Documents, Consultant shall submit in writing its final Estimate of Probable Construction Cost that is equal to or less than the Construction Budget. The construction documents will not be complete until such a final estimate is submitted.
- F. If bids for the Project are not opened within 90 days after the Consultant submits the final Estimate of Probable Construction Cost, then the Estimate of Probable Construction Cost may be reasonably adjusted by the Consultant to reflect any changes in the general level of prices in the construction industry between these two dates: (a) 90 days after the Consultant submits the final estimate, and (b) the date that bids are opened.

#### **SECTION 4: ADDITIONAL MISCELLANEOUS REQUIREMENTS**

##### **Consultant's Use of Subcontractors:**

If the Consultant intends to use Subconsultants or subcontractors to perform work associated with this contract within the City's Right of Way or jurisdiction, the Consultant shall ensure any Subconsultant/subcontractor utilized for work specified under this agreement is appropriately licensed and bonded for the work involved. Use of unlicensed contractors is prohibited. The Consultant shall submit copies of all licenses for proposed Subconsultants/subcontractors to be used.

##### **Project Plan and Specification Preparation:**

The Consultant shall prepare Project plans using the City's Standard Title Block to be located at the bottom or along right side of each plan sheet as directed. Plans, details and text size shall be such that all items are clearly legible at 50% reduced size. Lettering shall be no smaller than 0.10". Final signed plans shall be completed using mylar. A final (hard copy) original set of Plans and Specifications, properly signed and stamped, and complete bid package, is required to be on file in the City Engineer's Office at the time of approval for bidding by the City Council, and during bidding. This copy acts as the plan-of-

record for the public bidding process. All other electronic or other printed copies shall be a reasonable facsimile of the original plan-of-record. Project and City Standard Specifications shall be prepared using the City's standard front-end document that will be provided to the Consultant. Consultant shall recommend any project-specific additions or revisions for the boilerplate as appropriate. Consultant shall provide a bid schedule in City standard format. Specifications shall be in CSI format. Consultant shall edit City's front-end boilerplate. The specifications shall confirm with and complement the City's front-end boilerplate. The construction schedule shall be specified in Calendar Days unless otherwise agreed to by City.

**Storm Water Pollution Prevention and Erosion Control:**

Consultants shall ensure the Project is compliant with latest City, Regional, State, and Federal Storm Water Pollution Prevention and Erosion Control guidelines and requirements.

**Quality Control/Quality Assurance (QC/QA):**

Consultant shall provide documents in this agreement to at least the level of quality of the sample plans and specifications for the Morgan Hill Recreation Center provided with Consultant's proposal to the City during the Consultant Selection process. Consultant shall implement measures for cost control, schedule control and quality control as identified in the proposal submitted May 1, 2006. Noll & Tam will provide a Manager of Quality Control (Merideth Marschak) who will coordinate in-house detailed plan reviews, and other quality assurance activities.

All documents shall be organized, neat, legible, and reasonably free of technical and grammatical errors. Consultant shall implement and maintain the following quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this Project:

- QC/QA program in effect for the duration of this contract, at least to the extent proposed during the Consultant selection process.
- Design and calculations are independently checked, corrected and back-checked by the Consultant.
- When different disciplines are involved, employ means and methods to minimize conflicts and misalignments.
- QC/QA program shall provide for review and coordination and compatibility between the plans, specifications, bid documents, and estimated quantities.
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.
- City reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments. QC/QA, compatibility, workable design and constructability of the design are the Consultant's sole responsibility.
- City may obtain an independent peer review. Consultant shall revise the construction documents based upon the review.

**Project Meetings:**

Consultant is advised that the number and nature of meetings described elsewhere in this agreement are intended to provide an estimated level of meeting attendance required. Additional non-City Council meetings may be required through the course of the design. During the design submittal and approval process, or when special issues arise, the Consultant may be required to attend additional Council meetings. City Council meetings are held at 7PM on the first and third Tuesday of every month. All meeting attendance, participation and related costs shall be incorporated in the Consultant's services fee or Additional Services per meeting fee. The Consultant will be required to attend all Senior Center Facilities Subcommittee meetings, estimated at eight per year. In addition, the Consultant will be required to make periodic presentations to the Senior Advisory or Planning Commissions as noted in the

scope of services. Lastly, the Consultant is to attend periodic Project management meetings, anticipated bi-weekly (alternate weeks), to report on Project progress and coordination with other Project elements. The number of meetings and presentations indicated in each phase shall be included in the Consultant's scope of services. Specific numbers may be reallocated between phases by mutual written agreement between Consultant and City. If the total number of meetings and presentations for all phases is exceeded, further meetings and presentations shall be provided as Additional Services in accordance with Exhibit B.

## **SECTION 5: ADDITIONAL SERVICES**

The following services are not included in the Consultant's Services and may be provided by the Consultant as Additional Services per the terms described in the Agreement:

### **5.1 General**

- 5.1.1 Making major revisions in drawings, specifications or other documents when such revisions are:
  - 5.1.1.1 inconsistent with approvals or instructions previously given by the City, including revisions made necessary by adjustments in the City's program or budget; or
  - 5.1.1.2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents.
- 5.1.2 Providing services required because of significant Owner directed or approved changes in the Project including, but not limited to, size, quality, complexity, the approved Project schedule, or the method of bidding or negotiating and contracting for construction.
- 5.1.3 Providing services in connection with arbitration proceeding or legal proceeding except where the Consultant is party thereto.
- 5.1.4 Providing any other services not included in this Scope or not customarily furnished in accordance with generally accepted architectural practice for competitively bid work.
- 5.1.5 Preparing documents for alternate, multiple, or sequential construction bids,
- 5.1.6 Conducting, participating in or attending meetings or presentations beyond the numbers indicated in Consultant's scope of services

### **5.2 Mechanical**

- 5.2.1 Training of City staff on operations of building equipment

### **5.3 Lighting**

- 5.3.1 Design of custom light fixtures
- 5.3.2 Alarm system: Provision of building risk assessment and security system guideline development
- 5.3.3 Data Telecom: procurement and installation services for computer and telephone hardware and/or software systems. City will confirm desired personal computer workstation equipment for administrative staff and provide software as needed. City will confirm desired telephone handset units for administrative staff and telephone/voicemail system standards.

### **5.4 Sustainable Design Services**

- 5.4.1 Participation in USGBC LEED program including special calculations, documentation, or fees for LEED certification (LEED certification is not proposed for this project)

### **5.5 Architectural Considerations**

- 5.5.1 Custom weave carpet colors and patterns

### **5.6 Furniture**

- 5.6.1 Custom design chairs
- 5.6.2 Design and selection of manufacturer's assembly components of staff workstations and non-public office systems furniture.

5.7 Utilities

5.7.1 Utility Company transformer design, if needed

5.7.2 Negotiating utility agreements

5.7.3 Design of photovoltaic units/solar panels

5.7.4 Other non-customary utility design services

5.8 Structural Engineering

5.8.1 Provide structural design beyond the conceptual design level for upgrading the building to an Essential Facility.

**PART 2 CONSTRUCTION SERVICES**

**To included as amendment prior to construction. Exact scope to be determined as part of the amendment.**

TASK #8: CONSTRUCTION ADMINISTRATION

TASK #9: RECORD DOCUMENTS AND PROJECT CLOSEOUT



**Exhibit B**  
**Compensation Manner and Amount, Reimbursables, Estimated Payment Schedule,  
 Hourly Rates**

**Basic Compensation Fee**

The maximum amount of compensation for basic services to be paid to Consultant under this Agreement, including both payments for professional services and reimbursable expenses, shall not exceed Eight Hundred Eighty Eight Thousand One Hundred Seventy Five Dollars (\$888,175.00). Consultant shall not exceed the following dollar amounts for each work task:

Task	Description	Fee
Task 1	INVESTIGATION OF EXIST. CONDITIONS	77,915
Task 2	BUILDING PROGRAM & CONCEPTUAL DESIGN	105,250
Task 4	SCHEMATIC DESIGN	108,100
Task 5	DESIGN DEVELOPMENT	192,460
Task 6	CONSTRUCTION DOCUMENTS	382,940
Task 7	BIDDING AND AWARD	21,510
	SUBTOTAL, NOT-TO-EXCEED FEE, Scope of Basic Services =	888,175
	REIMBURSABLES ALLOWANCE (TIME & MATERIALS) =	55,000
	TOTAL NOT-TO-EXCEED FEE =	943,175
	Future Tasks:	
Task 8	CONSTRUCTION ADMINISTRATION	TBD
Task 9	RECORD DOCUMENTS AND PROJECT CLOSE-OUT	TBD

Consultant SHALL NOT shift allocation of budget among tasks with prior written approval of the City.

Consultant shall, during the term of this Agreement, invoice City monthly for services performed under this Agreement during the previous month. Providing the services covered by the invoice have been completed in accordance with the provisions of this Agreement, City shall pay Consultant the amount shown on the invoice within thirty (30) days of receipt of the invoice. Ten (10) percent shall be retained by the City from each contract billing until the completion of the contract. The retention for Tasks 1 and 2 will be released to Consultant upon successful completion of Tasks 1 and 2. Successful completion includes City Council approval of a final Building Program. The retention for Tasks 2 through 7 shall be released to the Consultant upon completion of all work tasks as specified in Exhibit A to the satisfaction of the City, and upon successful completion of the bidding and award process as described in Exhibit A and Section 2.2.1 of the Agreement. Upon completion of Task 2 and Task 7, Consultant shall submit a separate letter requesting release of retention accumulated to date.

The monthly invoice shall describe the topics and tasks completed during by Consultant and Subconsultants. The invoice shall list the hours expended with personnel charge rates, and reimbursable expenses, in accordance with "Exhibit B-2, Fee Schedule", incorporated herein. The hourly rates shown on each schedule are fixed for the project. The invoice shall also show the total to be paid for the invoice period. A budget summary shall be included on the front page of the invoice and shall show the total

budget amount, total amount billed to date, and the budget balance. A spreadsheet (attached) shall be used to record the monthly invoices and shall be attached to each invoice.

Reimbursable expenses shall only include cost of work product delivered to the City, including reproduction of documents, models and similar work delivered to the City. Travel expenses are not reimbursable.

**Exhibit B-2**  
**Noll & Tam Fee Schedule**

**2006 SCHEDULE OF BILLING RATES**  
*Noll & Tam Architects*

**Professional Billing Rates:**

Principal	\$175/hour
Senior Project Manager/Senior Architect	\$135/hour
Project Manager	\$115/hour
Project Designer/Project Captain	\$105/hour
Professional Staff	\$90/hour
Drafter	\$75/hour
Project Assistant	\$60/hour

**Reimbursable Expenses**

Reproduction, telephone, fax, travel outside the Bay Area, renderings, computer models, physical models, postage, messengers, and other usual expenses will be billed at 1.15 times actual cost.

**Exhibit B-3**  
**Invoice – Sample Format**

PROJECT NAME:

PROJECT NO:

PO NO:

ACCOUNT NO:

INVOICE NUMBER	INVOICE DATE	INVOICE AMOUNT	INVOICE TO DATE	AUTHORIZED		CONTRACT AND AMENDMENT			RETENTION		BALANCE REMAINING
				PAYMENT AMOUNT	PAID TO DATE	ACTION	DATE	AMOUNT	THIS INVOICE	TOTAL TO DATE	
						Agreement					

**Exhibit C**  
**Personnel, The Professional Team**

Noll & Tam Architects Staff contacts:	Architecture, Interior Design, Project Manager Janet Tam, Principal-in-Charge & Principal Designer Jeff Day, Project Manager Elizabeth McLeod, Project Architect
The Sports Management Group Staff contact:	Senior Center Programming and Senior Needs Lauren Livingston, Principal, senior center programmer
Nolte Engineering Staff contact:	Civil Engineer Tripat Mangat, Project Manager, civil
DASSE Design Staff contact:	Structural Engineer Bill Andrews
Guttman & Blaevoet Staff contact:	Mechanical Engineer, Plumbing, Fire Protection Tunde Munz, Assoc. Principal, plumbing/HVAC/fire
O'Mahoney & Myer Staff contacts:	Electrical Engineer, Lighting, Telecommunications Paul Carey, Principal, project engineer-electric/telecom David Orgish, Principal, lighting design
Smith, Fause & McDonald Staff contact:	Audio Visual facilities, Security System Peter McDonald
Royston Hamamoto Alley & Abey Staff contact:	Landscape Architect Aditya Advani, Principal-in-Charge
Oppenheim Lewis, Inc. Staff contact:	Cost Estimating Scott Lewis, President, project estimator
Pacific Geotechnical Engineering Staff contact:	Geotechnical Engineer Chalerm (Beeson) Liang, Geotechnical Engineer
The Marshall Associates Staff contact:	Food Service Steve Marshall, Principal-in-Charge
Bruning Design Staff contact:	Signage Patricia Bruning, Principal-in-Charge
Walsh-Norris & Associates Staff contact:	Acoustics Dave Walsh, Principal-in-Charge, project manager
SCS Engineers	Environmental Engineer/Hazardous Materials Testing

**Exhibit D**  
**Certificates of General and Automobile Insurance, Workers Compensation Insurance and**  
**Errors and Omissions Insurance**

**ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YY)  
07/17/06

PRODUCER

Dealey, Renton & Associates  
P. O. Box 12675  
Oakland, CA 94604-2675  
510 465-3090

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

## INSURERS AFFORDING COVERAGE

## INSURED

**Noll & Tam Architects**  
729 Heinz Avenue  
Berkeley, CA 94710

INSURER A: Fidelity &amp; Guaranty Ins. Underwriter

INSURER B: **St. Paul Fire & Marine Ins. Co.**

INSURER C: Hudson Insurance Company

INSURER D: Fidelity &amp; Guaranty Ins. Co.

INSURER F:

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	BK02200779	06/25/06	06/25/07	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$10,000.
	<input type="checkbox"/>				PERSONAL & ADV INJURY	\$1,000,000
	<input type="checkbox"/>				GENERAL AGGREGATE	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$2,000,000
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC					
D	AUTOMOBILE LIABILITY	BA02200778	06/25/06	06/25/07	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS					
	<input checked="" type="checkbox"/> NON-OWNED AUTOS					
	<input type="checkbox"/>					
	<input type="checkbox"/>					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
	<input type="checkbox"/>				AUTO ONLY: AGG	\$
A	EXCESS LIABILITY	BK02200779	06/25/06	06/25/07	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$1,000,000
	<input type="checkbox"/>					\$
	DEDUCTIBLE					\$
	RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	BW02200761	06/25/06	06/25/07	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER	\$1,000,000
					E.L. EACH ACCIDENT	\$1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$1,000,000
					E.L. DISEASE - POLICY LIMIT	\$1,000,000
C	OTHER Professional Liability	AEE7179000	03/31/06	03/31/07		\$2,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
PROJECT NAME/NUMBER: MILPITAS CIVIC SENIOR CENTER PROJECT NO. 8176

**BUSINESS LIABILITY ADDITIONAL INSURED:** The City of Milpitas and any other person named in the written contract, agreement or permit between (See Attached Descriptions)

CERTIFICATE HOLDER

ADDITIONAL INSURED: INSURER LETTER:

**CANCELLATION Ten Day Notice for Non-Payment of Premium**

City of Milpitas  
Attn: Mr. Greg Armendariz  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION  
DATE THEREOF, THE ISSUING INSURER WILL ~~NOT~~ MAIL 30 DAYS WRITTEN  
NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT NOT MORE THAN 60 DAYS~~

REPRESENTATIVES

**AUTHORIZED REPRESENTATIVE**

Kevin [Signature]

## DESCRIPTIONS (Continued from Page 1)

the Named Insured and the Certificate Holder per attached form CL/BF 22 40 03 95.

Waiver of Subrogation applies to Workers Comp & General Liability.



Policy Number: BK02200779

Owners, Lessees or Contractors (Form B)  
ADDITIONAL INSURED

Change(s) Effective: 07/17/06

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.** This endorsement modifies insurance policy under the following:

LIABILITY COVERAGE PART:

Schedule

Name of Person or Organization:

City of Milpitas  
Attn: Mr. Greg Armendariz  
455 E. Calaveras Blvd.  
Milpitas, CA 95035-5411

SECTION II - WHO IS AN INSURED is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

The City of Milpitas and any other person named in the written contract, agreement or permit between the Named Insured and the Certificate Holder.

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PRIMARY INSURANCE:

IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS INSURANCE.

SEVERABILITY OF INTEREST:

IT IS AGREED THAT EXCEPT WITH RESPECT TO THE LIMIT OF INSURANCE, THIS COVERAGE SHALL APPLY AS IF EACH ADDITIONAL INSURED WERE THE ONLY INSURED AND SEPARATELY TO EACH INSURED AGAINST WHOM CLAIM IS MADE OR SUIT IS BROUGHT.

WAIVER OF SUBROGATION:

IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED(S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

CL/BF 22 40 03 95

## WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" needs to be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement forms a part of Policy No. BW02200761

Issued to: Noll & Tam Architects

By: St. Paul Fire & Marine Ins. Co.

Premium (if any) TBD

We have a right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us).

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2-5% of the California workers compensation premium otherwise due on such remuneration.

### Schedule

#### Person or Organization

#### Job Description

City of Milpitas

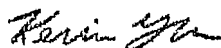
PROJECT NAME/NUMBER: MILPITAS CIVIC

Attn: Mr. Greg Armendariz

SENIOR CENTER PROJECT NO. 8176

455 E. Calaveras Blvd.

Milpitas, CA 95035-5411



WC 04 03 06

(Ed. 4-84)

Consulting Services Agreement between  
City of Milpitas and Noll & Tam Architects

Countersigned by \_\_\_\_\_

Authorized Representative

**Exhibit E**  
**Invoice or Claim Declaration**

I, [name of declarant], declare the following:

[CONSULTANT COMPANY NAME] has contracted with City of Milpitas and City of Milpitas Redevelopment Agency (City) for the MILPITAS SENIOR CENTER project. I am authorized by my employer [CONSULTANT COMPANY NAME] to prepare the attached invoice or claim for compensation (in other words, for money and/or time extensions) to City regarding this project (dated \_\_\_\_\_, 200\_\_, and requesting \$\_\_\_\_\_ and/or \_\_\_\_ additional working days), and I did prepare said attached claim. I am the most knowledgeable person at [CONSULTANT COMPANY NAME] regarding this claim.

I am aware that this claim is covered by law, including but not limited to California Penal Code section 72, Government Code sections 12650 *et seq.* (False Claims Act), and Business and Professions Code sections 17200 *et seq.* (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the contract, may lead to fines, imprisonment, and/or other severe legal consequences for myself and/or [Consultant company name].

The attached claim is prepared and submitted in good faith, and to the best of my knowledge does not breach the contract between [Consultant company name] and City for this project, does not violate any law, satisfies all provisions of the contract, only contains truthful and accurate supporting data, and only requests an amount that accurately reflects the adjustments to money and time for which I honestly and in good faith believe that City is responsible under its contract with [Consultant company name].

So that I could declare that the statements in this declaration and the attached claim were true and correct, while preparing this declaration and claim I consulted with others (for example, attorneys, consultants, or others who work for [Consultant company name]) when necessary to assure myself that said statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed \_\_\_\_\_, 200\_\_, at \_\_\_\_\_, California.

\_\_\_\_\_  
[name of declarant]

## **Exhibit F**

### **City Support**

During the Consultant's design and construction services, the following items will be the responsibilities of the City:

1. The City shall provide the Consultant direction and comment on alternatives developed by Consultant, with respect to programming and functionality of the new Milpitas Senior Center space, the interior and exterior design and site design based upon the Needs Assessment Report and other appropriate input.
2. The City shall provide direction and comment on what may be necessary to complete design milestones, and/or approve substantial completion of design milestones and cost estimates including Conceptual Design and Schematic Design. For the purpose of this Agreement, direct written authorization or approval from City shall mean and require the signatures of the City's Project Manager or his/her authorized designee.
3. City shall schedule presentations to community groups, City management, and City Council, with Consultant presentations/participation/support when required;
4. City shall provide record drawings of existing project facilities (when available). Consultant acknowledges that record documents of the City may not be accurate or complete, and Consultant shall verify any information in the field to their professional satisfaction.
5. City shall provide construction contract boilerplate (front-end), in Microsoft Word format to Consultant.
6. City shall print and provide construction contractors with copies of bid documents (plans and specifications) for advertising & bidding.
7. City shall advertise bid documents and award construction contracts.
8. City shall conduct construction administration, inspection, and building code inspections of the Project.
9. The City shall provide services related to moving the present senior center into the new facility.
10. The City shall provide Public Art oversight and manage the artist selection process, oversee City and artist agreement, coordinate artist artwork approvals, artwork budget and schedule, and oversee ordering and fabrication of the artwork. Consultant shall identify and provide space for suitable location(s), provide appurtenances in the design and the construction documents as needed to support and display the selected piece, and coordinate with the Public Art process as needed.